

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
September 20, 2004 Session

**ELEANOR BARNES v. HAMILTON COUNTY DEPARTMENT OF  
EDUCATION, ET AL.**

**Appeal from the Chancery Court for Hamilton County  
No. 99-1137     W. Frank Brown, III, Chancellor**

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**No. E2003-02645-COA-R3-CV - FILED FEBRUARY 2, 2005**

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When the City of Chattanooga decided to get out of the “school” business, Hamilton County assumed the task of operating the schools inside the city limits of Chattanooga. As required by statute, the Hamilton County Board of Education (“the County School Board”) submitted a plan to the Tennessee Commissioner of Education (“the Commissioner”) outlining its proposal for preserving the rights of the teachers who previously had been employed in the City school system. The plan provides that former teachers hired by the County would receive salaries pursuant to the collective bargaining agreement between the County School Board and the Hamilton County Education Association (“the HCEA”). Eleanor Barnes (“the plaintiff”) was an administrator in the City school system. Effective July 1, 1997, she became employed by the County School Board as an administrator in the County school system. She was hired, however, at a lower salary than the one she had been receiving from the City. The plaintiff brought this action against the defendants<sup>1</sup> alleging that her reduction in salary violated the provisions of Tenn. Code Ann. § 49-5-203(2002). In general terms, that statute addresses the “rights and privileges of a then existing teacher” upon the “change in the governmental structure of a school system.” She further averred that the plan submitted to the Commissioner constitutes a contract of which she is a third-party beneficiary. The parties filed cross motions for summary judgment. The trial court ultimately granted the defendants’ motion and dismissed the plaintiff’s complaint. It is from this order that the plaintiff appeals. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court  
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Frank P. Pinchak, Chattanooga, Tennessee, for the appellant, Eleanor Barnes.

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<sup>1</sup>The defendants are the Hamilton County Department of Education and the Hamilton County Board of Education.

William H. Pickering and Charles D. Lawson, Chattanooga, Tennessee, for the appellees, Hamilton County Department of Education and Hamilton County Board of Education.

## OPINION

### I.

The plaintiff began her teaching career in 1973. After teaching for several years and subsequently serving as an elementary school principal for seven years, the plaintiff became the Director of Human Resources for the City school system in 1992. The plaintiff's responsibilities included the recruitment, selection, evaluation, development and termination of teachers and other "certificated personnel" for all 24 elementary schools in the City school system. The plaintiff was also responsible for administrative and staff development, training and monitoring the teacher evaluation process, state school approval reports and employee relations. During this period of time, the plaintiff was a member of the bargaining unit represented by the Chattanooga Education Association ("the CEA") and was subject to an agreement between the Chattanooga Board of Education ("the City School Board") and the CEA. This contract specifically set forth and governed salaries paid to the members of the CEA bargaining unit, including individuals who were at the director level, such as the plaintiff.

In August, 1994, the Chattanooga City Council voted to repeal those provisions of the City Charter creating the City school system. Following public approval of the ordinance, the City school system ceased to exist on June 30, 1997. The contract between the City School Board and the CEA also expired by its terms on June 30, 1997. On July 1, 1997, the County School Board assumed responsibility for the management of all schools previously under the City school system.

Tenn. Code Ann. § 49-5-203(d) requires that "[p]rior to the change in any governmental structure or organization [of a school system] becoming effective," the "commissioner of education shall determine that the rights and privileges [of teachers]. . . are not impaired, interrupted or diminished." Those rights include, among other things, "salary, pension or retirement benefits, sick leave accumulation, tenure status and contract rights, whether granted by statute, private act or governmental charter." Tenn. Code Ann. § 49-5-203(c). Pursuant to this statute, Dr. Jesse Register, the Superintendent of the County school system, presented the "Hamilton County Board of Education Personnel Plan for County-Wide System" ("the Personnel Plan") to the Commissioner. The Personnel Plan provides that the defendants would preserve the rights of teachers formerly employed by the City and would manage personnel issues related to their employment. With respect to the rights of the former City employees, the plan states as follows:

Pursuant to Tennessee Code Annotate [sic] § 49-5-203(a), the County Board recognizes and affirms that the abolition of the Chattanooga City School System does not and will not impair, interrupt or

diminish the rights and privileges of teachers employed either by the Chattanooga Public Schools or by the Hamilton County Department of Education. Pursuant to Tennessee Code Annotated § 49-5-203(c), “rights and privileges” includes, but is not limited to, salary, pension or retirement benefits, sick leave accumulation, tenure status and contract rights of teachers, whether granted by statute, private act or governmental charter.

The Personnel Plan further provides that the Superintendent reserved the right to reassign administrative personnel, including those formerly employed in the City school system. It also stated that the contract between the City School Board and the bargaining unit represented by the CEA would expire on June 30, 1997. In addition, all certificated personnel employed by the County school department after June 30, 1997, would be paid salaries applicable to the positions to which they were assigned. The Personnel Plan was approved by the Commissioner on April 10, 1997.

Following the abolishment of the City school system, the plaintiff was hired as the Director of Licensed Personnel for the County school system. Therefore, pursuant to the Personnel Plan, the plaintiff became part of the bargaining unit represented by the HCEA, and was thereafter subject to the bargaining agreement (“the County contract”) between the County school department and the HCEA. Salaries and wages are mandatory subjects of these contracts.

During her last year with the City school system, the plaintiff’s base salary was \$68,808. She also received a \$3,000 state career ladder supplement. When she commenced work for the County on July 1, 1997, however, her salary was set at \$60,924.57, exclusive of the state supplement.

The plaintiff subsequently filed a complaint on October 22, 1999, alleging (1) that the reduction in her salary violated Tenn. Code Ann. § 49-5-203, and (2) that she was a third-party beneficiary of the Personnel Plan approved by the Commissioner. The plaintiff sought back pay, an order requiring the defendants to increase her salary to what it would have been absent the alleged violation, and other associated relief.

In their answer filed on December 17, 1999, the defendants denied that the plaintiff’s reduction in salary constituted a violation of Tenn. Code Ann. § 49-5-203. The defendants also raised five other defenses: that the complaint failed to state a claim upon which relief can be granted; that the trial court lacked subject matter jurisdiction; that Tenn. Code Ann. § 49-5-203 does not create a private right of action; that the plaintiff’s claims are barred by the “applicable statute of limitations”; and that the plaintiff has been paid all monies owing to her.

On January 26, 2000, the plaintiff filed a motion for summary judgment. In her affidavit submitted in support of the motion, she described the increased scope of her duties in the County school system, noting that she was now responsible for 64 schools as contrasted with 24 in the City school system, and that her duties relative to the state teacher evaluation process had been expanded

to include all 80 schools within the County school system. She made other statements which are not material to the basis upon which we have determined this appeal should be resolved.

The defendants disputed that the plaintiff's responsibilities had increased; in fact, they argued that they had been reduced. In their statement of material facts, they stated that, whereas under the City school system the plaintiff was the only personnel director, she presently was one of three such directors. They pointed out that some of her former personnel-related duties were assigned to the other two directors. They also challenged the characterization of her salary as a "salary reduction," stating that the plaintiff had never been hired by them prior to July 1, 1997, that her prior contract had expired, and that she was subject to the County contract.

The defendants moved to dismiss the plaintiff's claim as barred by the one-year statute of limitations set forth in Tenn. Code Ann. § 28-3-104 (2000). The plaintiff responded by arguing that either the three-year statute of limitations for damage to property, *see* Tenn. Code Ann. § 28-3-105 (2000), or the six-year statute of limitations for contract actions, *see* Tenn. Code Ann. § 28-3-109 (a)(3) (2000), was implicated by the facts of this case. The defendants subsequently moved for summary judgment on the following grounds: (1) that no violation of Tenn. Code Ann. § 49-5-203 had occurred; (2) that the defendants had not breached any "contract" with the Commissioner; (3) that the plaintiff failed to pursue her contractual and administrative remedies; and (4) that the plaintiff's claims were barred by the one-year statute of limitations.

## II.

The trial court ultimately determined that the defendants were entitled to summary judgment. It concluded that Tenn. Code Ann. § 49-5-203 confers a private right of action to a "teacher." However, the court held that the plaintiff was not a "teacher" within the meaning of that statute. The trial court also held that the plaintiff's claim was time-barred because it was not filed within the period specified in the applicable one-year statute of limitations. *See* Tenn. Code Ann. § 28-3-104.

On appeal, the plaintiff argues that she is a "teacher" within the meaning of the statute, and that the applicable period of limitations is either three years or six years. The defendants argue that the result reached by the trial court is correct. The defendants contend there are additional bases upon which the plaintiff's claim is barred: the failure of the plaintiff to exhaust the contractual and administrative remedies set forth in the County contract and the fact that Tenn. Code Ann. § 49-5-203 does not include a private right of action.

In rendering its judgment in the instant case, the trial court did not have the benefit of this court's decision in *Hardaway v. Bd. of Educ. of Hamilton County Schools*, No. E2003-01547-COA-R3-CV, 2004 WL 533941, at \*1 (Tenn. Ct. App. E.S., filed March 18, 2004). In *Hardaway*, we addressed the claims of two other employees of the abandoned City school system who subsequently became employed by the County in a situation essentially the same as that in the instant case. We adhere to our holding in *Hardaway*. Since the defendants did not violate Tenn. Code Ann. § 49-5-203 and since the plaintiff was compensated pursuant to the terms of the contract between

the defendants and the County bargaining unit, we affirm the judgment of the trial court, although we do so on grounds other than those relied upon by the trial court. See *Cont'l Cas. Co. v. Smith*, 720 S.W.2d 48, 50 (Tenn. 1986).

### III.

As noted in the preceding paragraph, this case is controlled by *Hardaway*. There we were presented with the same question now before us, *i.e.*, whether a teacher who was employed by the City school system is entitled to her prior salary upon being hired by the County school system. In *Hardaway*, two former City administrators brought suit against the County School Board for unlawfully reducing their salaries following the City's abandonment of its school system. *Hardaway*, 2004 WL 533941, at \*1. As in the instant case, the plaintiffs' salaries while employed by the City were governed by the City contract; however, as previously noted, that contract expired on June 30, 1997. *Id.*, at \*3. Their new assignments and salaries became effective on July 1, 1997, at which point they were subject to the agreement between the County School Board and the HCEA. *Id.*, at \*1. The trial court held that neither plaintiff could recover because their compensation was fixed by the County contract, and the plaintiffs' duties with the City were different from those required of their new posts in the County system. *Id.* Consequently, Ms. Hardaway, who was hired as a Mathematics Coordinator, had a salary that was specifically governed by the County contract. *Id.*, at \*3. Ms. Settles, who held a director's position similar to that held by the plaintiff in this case, had fewer responsibilities, and received a salary set by the County School Board, as contemplated by the County contract. *Id.*, at \*3,\*4.

The plaintiffs in *Hardaway* contended that their reduced salaries were unlawful because, according to them, those salaries violated Tenn. Code Ann. § 49-5-203, which provides as follows:

(a) The change in the governmental structure of a school system or institution through the process of annexation, unification, consolidation, abolition, reorganization or transfer of the control and operation of a school system or institution to a different type governmental structure, organization or administration shall not impair, interrupt or diminish the rights and privileges of a then existing teacher, and such rights and privileges shall continue without impairment, interruption or diminution.

(b) If the teacher becomes the employee of another school system or institution as a result of a change in the governmental structure, then the rights and privileges of such a teacher shall continue without impairment, interruption or diminution as obligations of the new government, organization or administration.

(c) "Rights and privileges," as used in this section, includes, but is not limited to, salary, pension or retirement benefits, sick leave

accumulation, tenure status and contract rights, whether granted by statute, private act or governmental charter.

(d) Prior to the change in any governmental structure or organization becoming effective, the commissioner of education shall determine that the rights and privileges protected by this section are not impaired, interrupted or diminished. In addition to the remedies available to a teacher aggrieved by a change in the governmental structure, organization or administration of a school system or institution, the commissioner is authorized to withhold state funds in the enforcement of this section.

We disagreed. Citing the language of the statute, we concurred with the County School Board that although Ms. Hardaway and Ms. Settles were entitled to the protection of the statute, the statute did not confer upon the plaintiffs “greater rights against [their] new employer than those [they] would have had against [their] former employer.” *Hardaway*, 2004 WL 533941 at \*4. We further held

[p]laintiffs’ salary rights with the Chattanooga Public Schools were governed by and dependent upon a Collective Bargaining Agreement which expired by its terms on June 30, 1997. They could not have compelled the City School Board to continue their existing salaries beyond June 30, 1997, and their authorized bargaining representative would have been required by Tennessee law to return to the bargaining table and renegotiate salaries and other terms and conditions of employment. Effective July 1, 1997, the Plaintiffs became subject to the Memorandum of Agreement between the County School Board and the HCEA. Plaintiffs’ *new salaries were consistent with and specifically authorized both by that Agreement and by the Personnel Plan approved by the Tennessee Commissioner of Education*. [Tenn. Code Ann.] § 49-5-203 protects a teacher’s rights and privileges, but the *receipt of an excess salary is not a right that was afforded protection*.

*Id.* (emphasis in original). We therefore disagreed with the plaintiffs’ fundamental argument that “any teacher in a prior system *who holds a position whatsoever in a new system* is absolutely entitled to the rate of pay the individual received in the prior system, regardless of any change in the individual’s duties, job title or responsibilities.” *Id.*, at \*5 (emphasis in original).

In light of our discussion in *Hardaway*, we find that the plaintiff in the instant case is not entitled to the salary she received pursuant to the City contract. That agreement expired on June 30, 1997. The plaintiff commenced receiving the disputed salary on July 1, 1997, under the terms of a different contract. She cannot now seek to enforce the terms of a contract that has expired; rather, she is subject to the County contract that she entered into through her bargaining agent, the HCEA.

In her brief, the plaintiff argues that our decision in *Hardaway* is not applicable for a number of reasons. First, she seeks to distinguish *Hardaway* on factual grounds. She argues that the plaintiffs in *Hardaway*, while employed by the City, were actually receiving salaries in excess of those to which they were entitled under the City contract and, effective July 1, 1997, were assigned to different positions with fewer responsibilities. The plaintiff contends that her prior salary was as contemplated by the City contract and that her responsibilities actually increased with her move to the County system. Even if true, we find these distinctions to be immaterial. The plaintiff's emphasis on the factual scenario presented by *Hardaway* fails to recognize the essential holding of that case, *i.e.*, that teachers who moved to the County system do not have rights beyond those which they would have had as City employees. The County contract provides that the County School Board was responsible for setting salaries of administrative personnel, and it was understood that upon the expiration of the City contract, the plaintiff would be subject to the terms of the contract between the HCEA and the County. While it is true that Ms. Hardaway, while a City employee, was receiving a salary in excess of that called for in the City contract, that fact was not integral to our decision in that case.

The plaintiff also proffers that *Hardaway* is inapplicable from a legal standpoint because, according to the plaintiff, the *Hardaway* plaintiffs were asking for rights beyond those to which they were entitled. The plaintiff in the instant case contends that the defendants seek to diminish a right to which she is entitled, namely her salary for performing the same job.

The plaintiff concedes that the County contract permitted the County School Board to determine her salary. However, she contends that the County must act in compliance with a Private Act of 1935, which contained tenure provisions applicable to certificated personnel in the City school system. That Act provided, in relevant part, as follows:

[A] transfer of a teacher or principal from one position to another for which he or she is qualified, or from one school to another at the same salary, or the same comparative salary, if there has been a general salary increase or reduction, shall not be considered as a demotion.

The plaintiff argues that any transfer to a lower paying position absent a general salary reduction would constitute a "demotion" under the aforesaid Private Act. She relies upon Section 5 of that Act which prohibited demotions "except for cause, inefficiency or immorality or on account of discontinuance of position, in which latter case the teacher or principal shall receive the first appointment to any position for which qualified."

We also find this argument to be without merit. As the defendants note, the cited Private Act was repealed when the City school system was abolished. They contend that it cannot serve as the

basis for the plaintiff's present claim.<sup>2</sup> Both sides also reference the Education Professional Negotiations Act, codified at Tenn. Code Ann. § 49-5-601 (2002), *et seq.* The plaintiff contends that the statute authorizing collective bargaining provides that contracts cannot contain anything that is contrary to state law or applicable municipal charter, *i.e.* the Private Act. *See* Tenn. Code Ann. § 49-5-612(a)(1) (2002). The defendants counter that the plaintiff's interpretation of the Private Act, if accurate, would contravene general law, particularly that provision of the tenure act which makes clear that administrative personnel do not have "position tenure." *See* Tenn. Code Ann. § 49-5-501(11)(A) (2002). In light of our disposition of this case, however, we need not address the applicability of the Education Professional Negotiations Act to the case before us. The contract under which the plaintiff received the higher salary expired on June 30, 1997. The salary that she subsequently received was governed by the agreement between the County School Board and the HCEA. The plaintiff cannot now seek to enforce rights that no longer exist, that is, rights that expired when the City contract expired. This is the clear holding of *Hardaway*.

#### IV.

In her complaint, the plaintiff averred that she was a third-party beneficiary of the "contract" between the defendants and the Tennessee Department of Education. She claims that this status authorizes her to bring a claim for breach of contract. The "contract" to which the plaintiff refers is the Personnel Plan submitted by the County pursuant to Tenn. Code Ann. § 49-5-203, which was approved by the Commissioner on April 10, 1997. According to the plaintiff, by reducing her salary, the defendants violated the provision of the Personnel Plan which provides that the defendants would not "impair[], interrupt[] or diminish[]" the plaintiff's rights.

The trial court held that the Personnel Plan did not constitute a contract governing the plaintiff's salary. As the trial court stated, one of the provisions of that plan provided

that teachers, excluding the management personnel, will be subject to the terms of the collective bargaining agreement between the [d]efendants and the [HCEA]. Under the old collective bargaining agreement with the Chattanooga Board of Education, management personnel's salary was set (like teachers' salaries) by the collective bargaining agreement. However, under the HCEA, management salaries are set by the Board of Education.

The Personnel Plan further provides that all teachers previously employed by the City "shall be paid the salaries applicable to the respective positions to which they are assigned or transferred," and those salaries "shall be governed by the salary schedules . . . for teachers and administrators set forth in the then effective Memorandum of Agreement between the County Board and the HCEA." We agree with the trial court's judgment on this issue. *The Personnel Plan specifically provides that the*

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<sup>2</sup>In support of their contention, the defendants refer us to copies of City of Chattanooga Ordinance No. 10079 and the referendum ballot in which the Private Act was, in fact, repealed.



*plaintiff's salary would be governed by the County contract.* Therefore, the Personnel Plan itself does not constitute a contract that would enable the plaintiff to enforce its terms as a third-party beneficiary.

In making her third-party beneficiary argument, the plaintiff attempts to rely upon our decision in *Hooks v. Gibson*, 842 S.W.2d 625 (Tenn. Ct. App. 1992). In *Hooks*, we concluded that the plaintiff-employees were third-party beneficiaries of an agreement between the State and the Sheriff, which consisted of a Policies and Procedures Manual that was required for the Sheriff to get the county jail certified. *Id.* at 626-27. In so deciding, we stated that

[t]he State's requirement that the Sheriff promulgate a Policies and Procedures Manual was designed to ensure the development of a skilled and dependable staff which inures to the benefit of his employees, and falls within the ambit of the third-party beneficiary rule for maintaining an action as beneficiary.

*Id.* at 627. The plaintiff argues that this is analogous to the instant case where the defendants were required by statute to obtain state approval prior to assuming operation of the City schools. Therefore, so the argument goes, she is a third-party beneficiary where the approval included the defendants' representation that they would not diminish the rights of former City personnel. We disagree. In *Hooks*, the manual contained the procedures for terminating employees, which procedures were integral to the employees' claims that they were discharged in violation of those policies. *Id.* at 626. The fundamental difference between *Hooks* and the matter before us is that the Personnel Plan contains explicit language providing that the terms of employment would be governed by a *separate agreement*. The plan provides that

[e]ffective July 1, 1997, all teachers previously employed by the Chattanooga Public Schools who are hired by the Hamilton County Department of Education . . . will be subject to the Memorandum of Agreement between the County Board and the HCEA. Unless and until the HCEA's majority status is challenged and defeated . . . the County Board will continue to recognize the HCEA as the exclusive bargaining representative of all negotiating unit employees employed by the Hamilton County Department of Education.

This agreement provides salary schedules and the manner by which administrators' salaries are to be determined, both of which are relevant to the plaintiff's claim. The Personnel Plan contains no such provisions. The plaintiff must rely on the contract between the County and HCEA; her reliance is not on the Personnel Plan as such.

V.

Our holding in *Hardaway* is sufficient justification for the trial court's judgment in the instant case. Accordingly, we do not find it necessary to reach the trial court's holdings pertaining to whether the plaintiff is a "teacher" under the language of Tenn. Code Ann. § 49-5-203 and the statute of limitations issue. By the same token, we do not find it necessary to reach the defendants' issues of exhaustion of administrative remedies and whether Tenn. Code Ann. § 49-5-203 includes a private right of action. All of these issues are pretermitted.

VI.

The trial court's grant of summary judgment to the defendants is affirmed. This case is remanded to the trial court for collection of costs assessed below, pursuant to applicable law. Costs on appeal are taxed to the appellant, Eleanor Barnes.

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CHARLES D. SUSANO, JR., JUDGE